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Massachusetts Outlook: The Remainder of 2016 and Beyond

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After closing the book on the formal sessions in July, Massachusetts lawmakers have turned their attention to the November election. The Senate and House of Representatives convene in informal sessions for the remainder of the year and no controversial legislative matters are expected to pass during this time.

Despite the absence of formal lawmaking, executive branch agencies will remain busy and legislative action is not precluded during this period. The legislature is not to be ignored, as an examination of all bills passed in the second year of the last two legislative sessions reveals that a significant number of bills are passed during informal sessions after July 31. In 2014, a total of 505 bills were signed into law, over 200 of which were passed after July 31. In 2012, 464 bills were signed into law, over 220 of which were passed after July 31. While many of these bills related to local concerns or otherwise noncontroversial topics, there is still a very real opportunity for other, more significant legislation to advance during what is often thought of as the quiet months of the year.

Below ML Strategies presents its forecast and analysis of the key developments to expect in Massachusetts for the remainder of this year and into the 2017-2018 legislative session.

Budget

- Looming over all spending plans is the possibility of a tax revenue shortfall opening up a widening gap in the state budget. The Baker Administration may soon be forced to consider mid-year spending cuts after the Department of Revenue announced that tax collections have fallen shy of monthly estimates used to construct the state's FY2017 budget. The Governor said that his administration will know by mid-October whether or not mid-year 9C budget cuts will be required. Experts have been unable to identify the specific cause of the revenue shortfall, which the Governor pinpoints at around $36 million. The legislature has already begun addressing the revenue shortfall, with a fiscal 2016 supplemental budget bill sent to Governor Baker's desk late last week that has an estimated cost of $187.5 million.

Health Care

- The Special Commission to Review Variation in Prices among Providers will meet through March as its members try to forge a consensus on a set of recommendations to the legislature aimed at addressing variation in health care pricing across the state. The Commission, which was established through a compromise in May to avoid a ballot question on this issue, will hold eight public meetings and focus on a range of health care pricing topics, including MassHealth's shift towards Accountable Care Organizations (ACOs), contracting practices between providers, insurance plan design, price transparency, and the state's role in the health care market.
- Hospitals across the Commonwealth will continue to cope with the combined cuts to its reimbursements rates. According to the hospital industry, recent MassHealth policy changes will reduce funding to hospitals by up to $200 million per year.
- The Health Policy Commission will hold its 2016 Cost Trends Hearings on October 17 and 18 at Suffolk University Law School. This annual gathering takes place on the heels of the Center for Health Information and Analysis' recent report saying that in 2015, Total Health Care Expenditures in Massachusetts were 3.9% above 2014 levels, exceeding the health care cost growth benchmark by 0.3%.
- The Baker Administration expects to finalize the MassHealth waiver extension it filed in July with the Obama Administration at some point this fall. Under the Governor's proposed waiver, which would span from July 2017 until June 2022, MassHealth would be restructured towards ACOs with the goal of achieving a more sustainable growth rate for the program. The existing waiver is set to expire on July 1, 2017.
- As the state moves MassHealth towards an integrated care ACO model, the Executive Office of Health and Human Services (EOHHS) expects to re-procure all MassHealth MCO contracts for an effective date of October 2017 beginning this fall.
- Pharmaceutical drug pricing will be a major issue during the next legislative session, as legislation is expected to be introduced that will create reporting requirements and extra transparency associated with the costs of drug production.
- Both the executive and legislative branches will continue to closely monitor the state's opioid addiction crisis and the impact of the state's initiatives to curb this ongoing problem. Nursing homes in particular are expected to receive added attention from state agencies on how they handle substance abuse

disorders.
- Tax exemptions for non-profit organizations, including hospitals and universities, will again be in danger after attempts were made last session to revoke their property tax exemptions.

Energy

- The change in the Senate chairmanship of the Joint Committee on Telecommunications, Utilities and Energy triggered by Senator Ben Downing's retirement will likely delay the start of any such initiative in the legislature until later in the spring of next year, at the earliest.
- Nevertheless, expect solar advocates to push for legislation in the next session that further lifts the capacity caps on solar incentives in the state. Likewise, energy efficiency advocates may well try to expand funding options by resurrecting so-called residential PACE legislation which was enacted by the House last session but did not survive the conference committee for the bill enacted last summer.
- The Department of Energy Resources (DOER) will continue to develop a new solar incentive program to replace the SREC II program as mandated by the **solar legislation** passed last April. Qualifying units will be eligible to receive SREC II credits until January 8, 2017, and after this date projects that do not qualify for an extension will need to seek incentives under the new program.
- The legislature will be faced with the question of what, if anything, it will do to expand natural gas pipeline capacity in the state after the Supreme Judicial Court's ruling in August vacating the Baker Administration's plan to allow electric distribution companies to recoup the cost of contracting for gas pipeline capacity from ratepayers. A measure preventing electric ratepayers from funding the expansion of the region's natural gas pipeline capacity was included in the Senate version of the recently approved clean energy imports bill, though it did not make it into the **final legislation**. The prospect of success for legislation designed to expand gas pipeline capacity in the state appears slim. Many legislators, especially those in the Senate, seem to oppose the idea.
- Throughout the fall, NEPOOL, the regional congress of electricity market participants, will engage on a consultative process seeking to reach an agreement among market participants on the changes to the market that will deliver the carbon reductions sought by New England states. This effort was initiated in response to concerns about the proper functioning of energy markets triggered by the recently passed legislation in Massachusetts and the Regional Clean Energy RFP.

Economic Development

- Lawmakers **fell short** in their effort at the end of last session to reach a compromise on non-compete reform, an issue that has long been a topic of discussion in the legislature. This issue will again be debated in the next session, as the failure to pass a bill was a big disappointment for the local startup community and left the contentious debate between employers and startup companies on the proper scope of non-competes unresolved.
- The so-called "Digital Right to Repair" bill, which was sent to a study in August, will likely reappear for consideration next session. The bill requires manufacturers to provide owners and repair businesses access to service information, security updates, and replacement parts.

Gaming

- In November, Massachusetts voters will decide on a ballot question that would permit the Gaming Commission to issue an additional license for a slot parlor establishment. Both House Speaker Robert DeLeo and Wynn Resorts have come out in opposition to the ballot question, saying that it runs counter to the intent of the landmark 2011 gaming legislation.
- In response to a trend of declining ticket sales among young adults, lottery officials and lawmakers have been pursuing legislation that would allow the state lottery to release online games. A Senate provision expanding online gaming failed to advance through a conference committee in July, but lottery officials and Beacon Hill supporters have declared their commitment to renewing the push for online expansion in the next session. This renewed effort could include a push for omnibus legislation that would allow the state government to regulate all types of online gaming, including the lottery.
- A panel tasked with studying online gaming, fantasy sports, and daily fantasy sports called for in the economic development legislation signed in August will begin meeting by November 1. The Commission will study issues related to these industries such as economic development, consumer protection, taxation, and legal and regulatory structures, among other topics. It is required to submit its final report, along with any recommendations for legislation, by July 31, 2017.

Transportation

- With the federal government and the City of Boston encouraging the development of self-driving cars, state policymakers will likely consider taking action as the technology gets closer to deployment. Representative William Straus, the co-chairman of the Transportation Committee, has called for changes to state laws to address self-driving cars and Transportation Secretary Stephanie Pollack has said that the state should prepare for the new technology. One bill authorizing self-driving cars is currently in the House Ways and Means Committee.

Additionally

- In July, the Senate passed the Paid Family and Medical Leave Bill. This legislation created the Family and Employment Security Trust Fund, into which employers and employees would be mandated to pay, and required that employers offer employees up to 16 weeks for family care and up to 26 weeks for temporary disability leave. The bill failed to advance through the legislature and will appear again in the next session.
- A bill seeking to ban employers' use of credit history in hiring, discharge, tenure, promotion, and discipline failed to advance through the legislature last session and is likely to be considered once again. The Boston City Council is currently debating an ordinance that provides protections against unlawful credit discrimination in employment decisions.

- Legislation addressing wage theft failed to advance last session and will most likely be refiled. That proposed bill addressed issues of misclassification of employees and violations of wage and unemployment insurance laws across all industries. It also included provisions for fines on employers who conduct business with a person who violates the law, which can extend to the company hiring the contractor or subcontractor.
- State Treasurer Deborah Goldberg, whose office oversees the Alcoholic Beverages Control Commission, has called for a review and overhaul of Massachusetts' liquor laws and regulations, which have remained mostly unchanged since their implementation in the 1930s. The call for an overhaul follows two emergency legislative fixes passed in July relaxing state liquor licensing regulations. The review of current liquor laws will be led by a taskforce of alcohol producers, wholesalers, retailers, and legal experts. The taskforce will convene in the fall and produce recommendations for legislators to consider in the next legislative session.
- A bill seeking to create a law regulating and prohibiting "patent trolling" was introduced during the last session. It did not advance and is likely to be filed again.
- Criminal justice reform will be a top priority for Democrats next session. It is expected that a comprehensive bill will be filed next session based on the findings of a task force commissioned last year by Baker, DeLeo, Senate President Stan Rosenberg, and Supreme Judicial Court Chief Justice Ralph Gants to review the Massachusetts criminal justice system.
- Another top priority for progressives is a proposed constitutional amendment to create a 4% surtax on income over $1 million. Revenues from this amendment, which has been called the "fair share" or "millionaire's tax," would help fund transportation and education.

Looking Forward

In addition to the aforementioned issues, the increasing tension between the House and Senate is a key development to watch moving forward. This conflict is rooted in the legislature's committee structure and bill consideration process: Massachusetts is one of only three states in the country to conduct the majority of its legislative work in joint committees. A majority of the joint committees' members come from the House, leading Senate lawmakers to argue that this structure creates an unfair power imbalance. In the coming session, the Senate may push to change the committee structure and replace joint committees with stand-alone committees. This tension between the two chambers and efforts to reform the committee structure has the potential to delay or slow the consideration of legislative initiatives in the coming session.

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